

Hawaii Revised Statutes.

CHAPTER 326

HANSEN'S DISEASE

Section

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Note

Chapter heading amended by L 1981, c 185, §2.

§326-1 Establishment of facilities for the treatment and care of persons with Hansen's disease. The department of health, subject to the approval of the governor, shall establish and maintain facilities and services as are necessary for the care and treatment of persons with Hansen's disease and persons who were institutionalized for

segregation by order of the department of health because of Hansen's disease.

Every such facility or service provider shall exercise every reasonable effort to effect a cure of those persons. All such persons shall be cared for as well as circumstances will permit, in accordance with accepted medical practices. Every patient shall be encouraged to take complete treatment so that prompt recovery can be attained. Isolation and treatment shall be compulsory only in those cases where, in the opinion of the department, that treatment is necessary to protect the health of the public, and the department may take such measures as may be necessary to enforce this section, including the adoption of rules pursuant to chapter 91. [L 1909, c 81, §1; RL 1925, §1183; am L 1931, c 139, §5; am imp L 1933, c 118, §2; RL 1935, §1140; RL 1945, §2401; am L 1949, c 53, §1; am L 1951, c 157, §1; am L 1953, JR 41, §5; RL 1955, §50-1; am L Sp 1959 2d, c 1, §19; HRS §326-1; am L 1969, c 152, §2; am L 1981, c 185, §3; am L 1985, c 250, §2; am L 1992, c 156, §3]

Cross References

General excise tax exemption, see §237-23.

Income tax exemption, see §235-7.

Real property tax home exemption, see §246-30.

Case Notes

Segregation of Hansen's disease sufferers legal. 5 H. 162.

See also case notes to §326-3.

[§326-1.3] Liberty, autonomy, and dignity of patient residents. (a) In recognition of the disruptions and hardships experienced over the course of their lives by former Hansen's disease patients residing at Kalaupapa, the legislature declares its intent to ensure that all residents at Kalaupapa are treated with dignity, respect, courtesy, and sensitivity and that the protections extended by this chapter to the patient residents at Kalaupapa are

honored and upheld by the department of health to the extent possible within their purview.

(b) Notwithstanding any other law to the contrary, the department of health shall promote and protect the personal liberty, autonomy, and dignity of all patient residents at Kalaupapa. [L 2005, c 37, §1]

[\$326-1.5] Patients living in the community; policy on services. It is the policy of the State that all persons who were institutionalized for segregation by order of the department of health because of Hansen's disease and who live in the community shall be accorded adequate health care and other medical treatment and services for the remainder of their lives as provided under sections 326-1 and 326-13, as long as they reside in the State; provided that the department of health shall be the payor of last resort for medical treatment and services not related to the treatment and care of Hansen's disease. [L 1992, c 156, §2]

§326-2 Equal treatment of patients. Every Hansen's disease sufferer at Hale Mohalu and Kalaupapa shall be accorded as nearly equal care and privileges as is practicable under the different operating conditions of the two institutions. [L 1953, JR 41, §7; RL 1955, §50-2; HRS §326-2; am L 1969, c 152, §1; am L 1981, c 185, §4]

§326-3 Care in other hospitals, homes, etc. Notwithstanding any law relating to this subject matter, the department of health may make arrangements for the care and treatment of any person within the State at any hospital, nursing home, or other residential facility in the State, either public or private, and bear all expenses of the hospitalization and treatment and any other necessary expenses in the same manner as though the person were staying at any facility for the care and treatment of persons with Hansen's disease established under section 326-1. Any moneys at any time appropriated for the care of patients or maintenance of a facility established under section 326-1 may be used by the department to pay any hospital, nursing home, or other

residential facility with which the department has made those arrangements. When those arrangements have been made the other provisions of this chapter relating to the examination, care, treatment, and discharge of patients shall apply to the institution and patient involved in the same manner as they apply to a facility established under section 326-1. [L 1949, c 392, §1; am L 1951, c 157, §2; RL 1955, §50-3; am L Sp 1959 2d, c 1, §19; HRS §326-3; am L 1969, c 152, §1; am L 1981, c 185, §5; am L 1985, c 250, §3; am L 1992, c 156, §4]

Case Notes

Sections 326-1 and 326-3, taken together, appear to authorize patient transfers at will. While Hale Mohalu residents would have only "unilateral expectation" to services at that facility, entitlement to treatment at some facility requires due process protection. State may not reduce services to leprosy patients to point of imperiling life or imposing severe hardship without pretermination hearing. Transfer of Hale Mohalu patients may work such reduction due to phenomenon of "transfer trauma." 616 F.2d 410.

State decision to close Hale Mohalu and transfer patients. 720 F.2d 564.

§326-4 Officers and employees; sickness and accident; expense. In case any officer or employee of the department of health becomes ill or is injured at the facility at Kalaupapa and, in the opinion of the physician of the facility, or in the absence of the physician an authorized agent of the department of health, suitable medical, hospital, nursing, or other services or facilities are not available there, the department shall incur and pay the reasonable and necessary expenses of removing and transporting the officer or employee to and from a place within the State where suitable hospital facilities or treatment can be secured. [L 1941, c 108, §1; RL 1945, §2405; RL 1955, §50-6; am L Sp 1959 2d, c 1, §19; HRS §326-4; am L 1968, c 63, §2; am L 1969, c 105, §1; am L 1985, c 250, §4]

§326-5 Appropriations, how spent. All moneys at any time appropriated for the upkeep, support, maintenance, and conduct of any hospital, facility, or place for persons affected with Hansen's disease, shall be expended under the supervision and authority and by the order of the department of health, upon vouchers signed by the director of health. [L 1931, c 139, §4; am L 1933, c 118, §1; RL 1935, §1144; RL 1945, §2406; am L 1949, c 53, §3; am imp L 1949, c 109; RL 1955, §50-7; am L Sp 1959 2d, c 1, §19; HRS §326-5; am L 1969, c 152, §1; am L 1981, c 185, §6; am L 1985, c 250, §5]

§326-6 REPEALED. L 1992, c 156, §9.

§§326-7 to 10 REPEALED. L 1969, c 152, §11.

§326-11 Voluntary transfer to and from Kalaupapa. Any person undergoing treatment and receiving care for Hansen's disease at Hale Mohalu on June 30, 1969, may be transferred to Kalaupapa for care and treatment if the person desires. Any person who may undergo treatment and receive care for Hansen's disease at Hale Mohalu after June 30, 1969, may apply to the director of health for transfer to Kalaupapa. Any person undergoing treatment and receiving care for Hansen's disease at Kalaupapa may be transferred to Hale Mohalu for care and treatment if the person desires. A person transferred may be retransferred to Kalaupapa if the person desires. [L 1953, JR 41, §1; RL 1955, §50-13; am L Sp 1959 2d, c 1, §19; HRS §326-11; am L 1969, c 152, §4; am L 1981, c 185, §8; am L 1985, c 250, §6]

§326-12 REPEALED. L 1969, c 152, §11.

§326-13 Expenses; rules. (a) The department of health shall bear all expenses of travel and other necessary expenses incurred under sections 326-1 to 326-14 and may adopt all

rules and forms and perform all acts necessary and proper for carrying out their provisions.

(b) Expenses related to patients shall be tracked separately from nonpatient costs, whenever appropriate and possible. [L 1909, c 81, §8; RL 1925, §1190; RL 1935, §1152; RL 1945, §2414; RL 1955, §50-15; am L Sp 1959 2d, c 1, §19; HRS §326-13; am L 2004, c 232, §3]

Note

Sections 326-6 to 10, 12, and 14, referred to in text, are repealed.

Cross References

Rulemaking, see chapter 91.

§§326-14, 15 REPEALED. L 1969, c 152, §11.

§326-16 REPEALED. L 1992, c 156, §10.

§§326-17 to 19 REPEALED. L 1969, c 152, §11.

§326-20 REPEALED. L 1992, c 156, §11.

§326-21 Employment of patients. At any facility for the care and treatment of persons with Hansen's disease, the department of health, with the consent of a patient, may employ that patient to perform labor or service.

When there are vacancies in positions, classified under chapter 76, at a facility exclusively for the care and treatment of persons with Hansen's disease, employment preference shall be given to temporary release patients and

discharged patients from those facilities provided that the persons so hired shall be otherwise qualified under chapter 76.

Discharged patients who have been employed prior to December 30, 1960, under chapter 76 in accordance with the second paragraph of this section shall be eligible to receive the same rights and privileges as those enjoyed by temporary release patients employed under the second paragraph of this section. [L 1937, c 108, §1; RL 1945, §2424; am L 1951, c 157, §11; am L 1953, c 241, §1; RL 1955, §50-24; am L 1957, c 10, §1; am L Sp 1959 2d, c 1, §19; am L 1961, c 13, §1; HRS §326-22; am L 1969, c 152, §1; am L 1974, c 115, §2; am L 1981, c 185, §10; ren and am L 1983, c 183, §2; am L 1985, c 250, §8; am L 1992, c 156, §5; am L 2000, c 253, §150]

Case Notes

Existence or nonexistence of Hansen's disease not to be determined collaterally in habeas corpus proceedings. 19 H. 218.

§326-22 Compensation of patient employees. The compensation for patients employed under section 326-21 shall be set by the department of health; provided that in no case shall the compensation be less than the minimum wage as established by section 387-2.

Each patient employee of the department shall be entitled to and granted sick leave with pay and a vacation with pay each calendar year, each calculated at the following rate:

For patients working six hours a day, one and one-half days for each month of service;

For patients working five hours a day, one and one-quarter days for each month of service;

For patients working four hours a day, one day for each month of service.

A month of service is defined as eighty or more hours of work which may be accumulated over any period of time to total eighty hours. No more than twelve months of service

may be earned and credited in any calendar year, even if the total number of hours worked should exceed nine hundred sixty hours. [PC 1869, c 62, §5; am L 1929, c 149, pt of §1; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1945, §2423; am L 1945, c 159, §1; am L 1949, c 371, §1 and c 378, §1; RL 1955, §50-23; am L 1959, c 146, §1; am L Sp 1959 2d, c 1, §19; am L 1962, c 28, §32; HRS §326-21; am L 1968, c 34, §2; am L 1974, c 115, §1; ren and am L 1983, c 183, §3; am L 1989, c 66, §1]

§326-23 Pensions for patient employees at facilities. All patient employees or patient laborers at every facility maintained for the treatment and care of persons with Hansen's disease shall be entitled, upon retirement after twenty years or more service with the department of health, to a pension in an amount which shall be equal to sixty-six and two-thirds per cent of the monthly wage or salary which the patient was receiving at the time of retirement, or to a pension in an amount which shall be equal to sixty-six and two-thirds per cent of the average monthly wage or salary which the patient employee was receiving during the last twelve months of employment at the department of health, whichever is higher.

Patient employees may use service with any state department or agency not exceeding five years which has not been credited under the state retirement system in lieu of service with a facility maintained for the treatment and care of persons with Hansen's disease to satisfy the requirements of the preceding paragraph; provided that the service shall be authenticated by official records of the department where service was performed.

When work is available at Kalaupapa which may be fulfilled by patient residents of the facility under section 326-21 and there are no applicants for those positions from among the eligible patients, pensioned patients who are in residence at Kalaupapa may be reemployed, not to exceed nineteen hours per week, without relinquishing the pension granted to them under this section. Furthermore, notwithstanding any other law relating to this subject, that reemployment shall not result in suspension or termination of payment of the pension granted originally or serve to increase, decrease, or alter the pension in any way. [L 1945, c 229, §1; am L 1949, c 53, §16; am L 1951, c

157, §12; RL 1955, §50-25; am L 1957, c 57, §1; am L Sp 1959 2d, c 1, §19; HRS §326-23; am L 1970, c 43, §1; am L 1979, c 18, §1; am L 1981, c 185, §11; am L 1985, c 250, §9; am L 1992, c 156, §6]

Attorney General Opinions

District magistrate of Kalawao is not in "service with the board of health". Att. Gen. Op. 63-21.

§326-24 Rules. The director of health may adopt rules pursuant to chapter 91 necessary for the conduct of all matters pertaining to Hansen's disease, the treatment and care thereof, and other services provided to persons affected with Hansen's disease, and the full and complete governance of the county of Kalawao, except as limited by this chapter. [L 1870, c 33, pt of §1; RL 1925, §1199; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1935, §1162; RL 1945, §2425; am L 1949, c 53, §17; am L 1951, c 157, §13; RL 1955, §50-26; am L 1965, c 96, §36; HRS §326-24; am L 1969, c 152, §6; am L 1981, c 185, §12; am L 1985, c 250, §10]

§326-25 Accounts, reports. The department of health shall keep an accurate and detailed account of all sums of money expended by it. The department shall report to the legislature at its regular sessions, such expenditures in detail, together with such information regarding Hansen's disease as it may deem to be of interest to the public. [PC 1869, c 62, §7; RL 1925, §1200; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1935, §1163; RL 1945, §2426; am L 1949, c 53, §18; RL 1955, §50-27; am L Sp 1959 2d, c 1, §19; HRS §326-25; am L 1969, c 152, §1; am L 1982, c 147, §15]

[§326-25.5] Annual report. The department of health shall submit a report to the legislature no later than twenty days prior to the convening of each regular session that addresses the following with regard to Kalaupapa Settlement:

- (1) The department's provision of medical and basic living needs of the patients;
- (2) The department's progress toward defining and addressing the nonmedical needs of patients;
- (3) The department's progress toward promoting a positive living environment;
- (4) The department's management of state resources, including benefits given to employees that are not statutorily defined;
- (5) The department's progress toward establishing written policies and procedures for Kalaupapa store;
- (6) The department's progress toward establishing and maintaining a complaint file and adequately addressing complaints;
- (7) The performance of the administrator, including compliance with job duties;
- (8) The department's progress toward adequate accountability of state property; and
- (9) Details and justification of approved employee air travel requests and trail pay. [L 2004, c 232, §2]

§326-26 Persons allowed at places for Hansen's disease patients. (a) No person, not having Hansen's disease, shall be allowed to visit or remain upon any land, place, or inclosure set apart by the department of health for the domiciles and community facilities of persons affected with Hansen's disease, without the written permission of the director of health, or some officer authorized thereto by

the department, under any circumstances whatever, and any person found upon such land, place, or inclosure without a written permission shall be fined not less than \$10 nor more than \$100 for such offense; provided that any patient resident of Kalaupapa desiring to remain at the facility shall be permitted to do so for as long as the person may choose, regardless of whether the person has been successfully treated.

(b) Notwithstanding subsection (a), upon the request of a patient, the non-patient-spouse of a patient residing at Kalaupapa shall be allowed to reside with the patient-spouse at Kalaupapa. The non-patient-spouse shall not be entitled to receive any services or benefits accorded specifically to Hansen's disease patients at Kalaupapa. [L 1870, c 33, pt of §1; am L 1903, c 8, §2; RL 1925, §1201; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1935, §1164; RL 1945, §2427; am L 1949, c 53, §19; RL 1955, §50-28; am L Sp 1959 2d, c 1, §19; HRS §326-26; am L 1969, c 152, §1; am L 1977, c 25, §3; am L 1981, c 185, §13; am L 1982, c 147, §16; am L 1985, c 250, §11; am L 1996, c 2, §1]

§326-27 Kalaupapa store; loans for operation and maintenance. (a) All moneys to enable the department of health to operate and maintain the Kalaupapa store, situated in Kalaupapa, Molokai, shall be allocated by the legislature through appropriations out of the state general fund.

(b) The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(c) All moneys received in reimbursement of payments made under this section shall be deposited to the credit of the state general fund. [L 1915, c 15, §1; RL 1925, §1202; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1935, §1165; RL 1945, §2428; RL 1955, §50-29; am L Sp 1959 2d, c 1, §19; HRS §326-27; am L 1993, c 280, §38]

§326-28 Kalaupapa store prices; penalty. It shall be unlawful for the department of health or its agents to sell or offer for sale any merchandise at the Kalaupapa store at

prices exceeding the actual cost thereof, free on board steamer or any other means of transportation at Honolulu. Any person violating this section shall be fined \$25 and in addition thereto shall, in the discretion of the department, be subject to removal from office. [L 1927, c 245, §§1, 2; am imp L 1931, c 139, §5; am imp L 1933, c 118, §1; RL 1935, §1166; RL 1945, §2429; am L 1949, c 80, §1(4); RL 1955, §50-30; am L Sp 1959 2d, c 1, §19; HRS §326-28]

§326-29 Fishing laws exemption; Kalaupapa. Notwithstanding any provision of law to the contrary, state laws on fishing shall not be applicable to Hansen's disease patients of Kalaupapa, provided the patients engage in fishing along the shorelines and in waters immediately adjacent to the county of Kalawao.

No fish or other marine products obtained by patients may be sold outside of the county of Kalawao.

The department of health shall adopt rules pursuant to chapter 91 necessary to control all fishing and acquisition of marine products by Hansen's disease patients. [L 1957, c 106, §§1 to 3; am L Sp 1959 2d, c 1, §19; Supp, §50-41; HRS §326-29; am L 1969, c 152, §1; am L 1981, c 185, §14; am L 1985, c 250, §12]

§326-30 Making or taking of pictures without permission prohibited. (a) No person shall photograph, film, or videotape any patient at any facility maintained by the department of health for the care and treatment of persons with Hansen's disease, without the written permission of the patient.

(b) Any person violating this section shall be fined not more than \$1,000 per incident. [L 1923, c 78, §§1, 2; RL 1925, §1203; am L 1925, c 98, §1; am L 1931, c 139, §5; am L 1933, c 118, §1; RL 1935, §1167; RL 1945, §2430; am L 1949, c 80, §1(5); am L 1951, c 157, §14; RL 1955, §50-31; HRS §326-30; am L 1969, c 152, §7; am L 1981, c 185, §15; am L 1985, c 250, §13; am L 1992, c 156, §7]

§§326-31, 32 REPEALED. L 1969, c 152, §11.

§326-33 Damien Memorial Chapel. The Father Damien Memorial Chapel at Kalawao, Molokai, and the premises and graveyard thereof are hereby declared to be a public memorial to Father Damien. [L 1935, c 38, §1; RL 1945, §2437; RL 1955, §50-34; HRS §326-33]

§326-34 County of Kalawao; governance. (a) The county of Kalawao shall consist of that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu, and commonly known or designated as the Kalaupapa Settlement, and shall not be or form a portion of the county of Maui, but is constituted a county by itself. As a county it shall have only the powers especially conferred and given by sections 326-34 to 326-38 and, except as provided in those sections, none of the provisions of the Hawaii Revised Statutes regarding counties shall be deemed to refer to or shall be applicable to the county of Kalawao.

(b) The county of Kalawao shall be under the jurisdiction and control of the department of health and be governed by the laws, and rules relating to the department and the care and treatment of persons affected with Hansen's disease, except as otherwise provided by law. [L 1905, c 39, §2; RL 1925, §1577; am L 1931, c 138, §1; am imp L 1933, c 118, §§1, 2; RL 1935, §2928; RL 1945, §2438; am L 1949, c 53, §26; am L 1951, c 157, §15; RL 1955, §50-35; am L Sp 1959 2d, c 1, §19; HRS §326-34; am L 1969, c 152, §8; am L 1981, c 185, §16; am L 1988, c 263, §10]

§326-35 Sheriff, appointment, removal. There shall be no county officer in the county other than a sheriff, who shall be a patient resident of and be appointed in the county by the department of health and who shall hold office at the pleasure of the department or until a successor is appointed by the department. When a qualified patient resident is not available, the department may appoint a staff employee or other qualified person to serve as sheriff. [L 1905, c 39, §3; am L 1911, c 134, §1; RL 1925, §1578; am L 1931, c 138, §1; am imp L 1933, c 118,

§§1, 2; RL 1935, §2929; RL 1945, §2439; am L 1951, c 157, §16; RL 1955, §50-36; am L Sp 1959 2d, c 1, §19; HRS §326-35; am L 1985, c 250, §14; am L 1989, c 97, §1 and c 211, §10; am L 1990, c 281, §11]

§326-36 Sheriff, salary. The salary of the sheriff shall be fixed and paid by the department of health out of the appropriation allowed by the legislature for the care and treatment of persons affected with Hansen's disease. [L 1905, c 39, §4; RL 1925, §1579; am L 1931, c 138, §1; am imp L 1933, c 118, §§1, 2; RL 1935, §2930; RL 1945, §2440; am L 1949, c 53, §27; am L 1951, c 157, §17; RL 1955, §50-37; am L Sp 1959 2d, c 1, §19; HRS §326-36; am L 1969, c 152, §9; am L 1981, c 185, §17; am L 1985, c 250, §15; am L 1989, c 97, §2 and c 211, §10; am L 1990, c 281, §11]

§326-37 Sheriff, duties. The sheriff of the county of Kalawao shall preserve the public peace and shall arrest and take before the district judge for examination all persons who attempt to commit or who have committed a public offense and prosecute the same to the best of the sheriff's ability. [L 1905, c 39, §5; RL 1925, §1580; RL 1935, §2931; RL 1945, §2441; RL 1955, §50-38; HRS §326-37; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

§326-38 Sheriff, powers. The sheriff may appoint and dismiss and reappoint as many police officers as may be authorized by the department of health for the county. Patient residents, for the services rendered as police officers, shall receive pay as the department determines and which pay shall be taken out of and from the appropriation made by the legislature for the care and treatment of persons affected with Hansen's disease. The sheriff shall have other powers and duties within the county of Kalawao and appropriate thereto as are prescribed by law for the chiefs of police or police officers of the several counties respectively. [L 1905, c 39, §6; RL 1925, §1581; am L 1931, c 138, §1; am imp L 1933, c 118, §§1, 2; RL 1935, §2932; RL 1945, §2442; am L 1949, c 53, §28 and c 80, §1(7); am L 1951, c 157, §18; RL 1955, §50-39; am L Sp

1959 2d, c 1, §19; HRS §326-38; am L 1969, c 152, §10; am L 1977, c 191, §2; am L 1981, c 185, §18; am L 1985, c 250, §16; am L 1989, c 211, §10; am L 1990, c 281, §11]

§326-39 Penalty. Any person violating this chapter, or any rule or regulation of the department of health relating thereto, shall be deemed guilty of a misdemeanor. Except as herein otherwise provided, the punishment therefor shall be the same as provided by section 321-18. [L 1951, c 157, §19; RL 1955, §59-40; am L Sp 1959 2d, c 1, §19; HRS §326-39]

§326-40 Kalaupapa; policy on residency. The legislature finds that Hawaii's Hansen's disease victims have in many ways symbolized the plight of those afflicted with this disease throughout the world. Their sufferings and social deprivations helped eventually to bring the story of the disease and an understanding of its health ravages to people everywhere. Those patients who settled in Kalaupapa remain a living memorial to a long history of tragic separation, readjustment, and endurance.

It is the policy of the State that the patient residents of Kalaupapa shall be accorded adequate health care and other services for the remainder of their lives. Furthermore, it is the policy of the State that any patient resident of Kalaupapa desiring to remain at the facility shall be permitted to do so for as long as that patient may choose, regardless of whether or not the patient has been successfully treated. A patient resident of Kalaupapa desiring to take leave may do so without loss of financial allowance or coverage of health care costs given those who remain at Kalaupapa. [L 1977, c 25, §2; am L 1981, c 185, §19; am L 1985, c 250, §17; am L 1992, c 156, §8]